COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Central Excise Appeal No. 8 of 2005

Commissioner of Customs & Central Excise,
Commissionerate, Meerut-I,
Mangal Pandey Nagar,
Meerut-250005 ...Appellant

Versus

M/s Doiwala Sugar Co. Ltd.,
Dehradun (Uttaranchal) ... Respondent

Dated: 8 June, 2007

Sri Arvind Vashist, learned Assistant S.G. for the Department
Sri Alok Arora, learned counsel for the respondent

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This is an appeal under Section 35-G of the Central Excise Act, 1944 preferred by the Department against the judgment and order dated 27.12.2004 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in appeal no. ST/24/03-NB-SM.

2. The following question of law has been raised for consideration of this Court :

> ***"Whether Rule 7A of Service Tax Rules (inserted under Service Tax Amendment Rule 2003 w.e.f. 14.05.2003) speaks about furnishing of returns within six months from 14.05.2003 or 'failure to make payment within a period of six months (as observed by Hon'ble Tribunal)' ?"***

3. Brief facts of the case giving rise to the present appeal are that the respondent M/s U.P. State Sugar Corporation Ltd., Doiwala were issued two show cause notices dated 31.8.1998 and 19.5.1999 respectively by the Superintendent, Central Excise, Range-I, Dehradun

wherein it was alleged that in terms of Section 88 of the Finance Act, 1994 read with notification No. 41/97 to 43/97 dated 5.11.1997, Service Tax @ 5 per cent of freight paid becomes leviable on the services rendered by goods transport operators w.e.f. 16.11.1997. The respondent has contravened the provisions of the said Act inasmuch as they failed to get themselves registered with Central excise Department under section 69 for providing taxable services and failed to collect & pay Service Tax as required under Section 68 of the Finance Act, 1994. The opposite party has failed to submit the periodical return in form ST-3 as required under Section 70 as well as failed to deposit interest under Section 75 of the Finance Act, 1994. The Deputy Commissioner vide his order dated 13.12.2001 confirmed the demand of Service Tax deposited by the appellant and the balance amount of Rs. 2,23,952/- along with the interest @ 24 per cent per annum on the balance amount of Service Tax from the date of levy till the date of deposition of Service Tax and interest @ 18 per cent per annum on the amount already deposited from the date of levey till the date of deposition of Service Tax under Section 75. A penalty @ Rs. 200/- per day on the balance amount as well as on the amount already deposited from the date of levy till the date of deposition of Service Tax under Section 76 and Rs. 3000/- under Section 77 for not submitted the returns of three quarters were also imposed.

4. Being aggrieved with the said order, the opposite party/respondent preferred as appeal before the Commissioner (Appeals), Customs & Central Excise, Meerut, which was disallowed vide order dated 11.6.2003.

5. Against the aforesaid order of the Commissioner (Appeals), Customs & Central Excise, Meerut, the opposite party/respondent preferred an appeal before the Customs,

Excise & Service Tax Appellate Tribunal. The Tribunal vide its order dated 27.12.2004 allowed the appeal and set aside the order of the Commissioner (Appeals), Customs & Central Excise.

6. The Tribunal having rejected the contentions of the Department, the appellant has come up in appeal before this Court.

7. We have heard learned counsel for the parties and perused the record.

8. In the facts and circumstances of the case and after having gone through the show cause notices, the order passed by the Deputy Commissioner, Commissioner (Appeals) as well as the impugned order of the Tribunal and in the light of material available on the record, we are of the considered opinion that the question of law raised for determination in the present appeal has already been concluded by the finding of fact and there appears to be no such substantial question of law to be answered by this Court. We are in full agreement with the findings recorded by the learned Tribunal in its judgment. The findings recorded by the learned Tribunal are the findings of fact and do not call for any interference by this Court. Therefore, the question raised in the appeal is accordingly decided in favour of the respondent and against the Department.

9. In view of the above, we dismiss the appeal. No order as to costs.

(B.C. Kandpal, J.) 8.6.2007

(P.C. Verma, J.) 8.6.2007

Prabodh